IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3349 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AARTIBEN JOSHI PRESIDENT JUNAGADH MUNICIPALITY

Versus

STATE OF GUJARAT

Appearance:

MR HRIDAY BUCH for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondents Nos. 1 & 4

RULE SERVED BY DS for Respondents Nos. 2, 3 & 6

MR PS CHAMPANERI for Respondent No. 5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/11/2001

ORAL JUDGEMENT

#. Heard the learned advocates. Leave to add the prayer.

#. The petitioner before this Court is the President of the Junagadh Municipality (hereinafter referred to as 'the Municipality'). Prior to the election of the petitioner as the President, the respondent no.5 was functioning as the President of the Municipality. In Special General Meeting of the Municipality held on 20th September 2000, 'No Confidence Motion' was passed against the respondent no.5. She was, thus, removed from the office of the President and thereafter the petitioner was elected as the President. The said Resolution dated 20th September 2000 was challenged by the respondents nos.5 and 6 before the District Collector, Junagadh under Section 258(1) of the Gujarat Municipalities Act, 1963 (hereinafter referred to as 'the Act'). The Collector was, under his order dated 8th November 2000, pleased to dismiss the said appeal and uphold the impugned Resolution dated 20th September, 2000. Feeling aggrieved, the respondent no.5 preferred Special Civil Application No.11260/2000, which was disposed of by this Court (Coram : DH Waghela, J.) on 27th February, 2001. The learned advocates appearing for the parties had agreed that the alternative remedy under the Act was available to the respondent no.5. In view of the said agreement, the Court observed as under :

> "Learned counsel Mr.Anshin H.Desai appearing for the respondent Nagarpalika has no objection to the petitioner approaching the appellate Authority and the appellate Authority entertaining the same and deciding the same on merits subject to the contentions of the respondents as expeditiously as possible and preferably within one month of the filing of the appeal."

Pursuant to the said order, the respondent no.5 has preferred appeal before the State Government under Section 264 of the Act, which has been received by the State Government and numbered as Revision Application No.17/2001. The respondent no.6 also preferred appeal before the State Government, which has been received by the State Government and numbered as Revision Application No.63/2000. Feeling aggrieved, the petitioner has preferred the present petition.

#. The petitioner has contended that Section 264 of the Act does not empower the State Government to entertain any appeal/revision against the order of the Collector made in exercise of power conferred by Section 258(1) of the Act. The petitioner has, therefore, prayed for writ

of prohibition and for quashing and setting aside the proceedings pending before the State Government. Mr.Buch has strenuously urged that Section 264 of the Act does not confer any specific power upon the State Government to entertain appeal or revision against the order made by the Collector in the subject matter. The State Government, therefore, should not be allowed to proceed further with the hearing of the said Revisions. He has also relied upon the allegation of malafide made in Paragraphs nos.14 and 15 of the memo of the petition. I must say that there are some allegations made against the concerned Minister one Shri Parmanand Khattar, but he is not impleaded as party respondent. As far as other allegations are concerned, I am of the view that the same are vague. It is stated that, 'the petitioner states and submits that the respondents nos.5 and 6 are trying to give a political colour to the issue by pressurizing the respondent no.1 to pass orders in favour of the respondents nos.5 and 6 by allowing the appeal and revision application of the respondents nos.5 and 6 as the present Body of the Junagadh Municipality is of the opposition party and the ruling party of the State is out to see to it that the present Body is by hook or crook removed and therefore, the respondent no.1 is dancing to the tune of the ruling party of the State Government and there is all likelihood that the respondent no.1 will not consider any of the objections either preliminary or otherwise raised by the present petitioner.'

#. Hence, it is apparent that it is a mere apprehension of the petitioner that the State Government would not consider her contentions. The apprehension has no base to stand on. Such allegation of malafide can not be entertained.

#. As regards the power of the State Government to entertain appeal/revision against the order in question is concerned, I am of the view that the said issue can be raised before the State Government as well. There is no reason to believe that if such a contention is raised, the same shall not be decided by the State Government after considering all the arguments advanced before it. I am, therefore, of the view that there is no cause of action so far the present petition is concerned. The petition is misconceived, hence, dismissed. Rule is discharged. Interim relief is vacated. The parties shall bear their own costs. The Registry shall send the writ forthwith.

#. It is, however, clarified that the petitioner shall be at liberty to move the State Government to consider

and decide the issue of its jurisdiction as preliminary issue. The respondents nos.5 and 6 shall also be at liberty to move the State Government for early hearing of the revision applications.

#. Learned advocate Mr.Buch requests that the operation of this order be stayed for four weeks. The request is rejected.

3rd November, 2001. (Ms. R.M. Doshit, J.)

/sakkaf